

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.190 OF 2007

IN

WRIT PETITION NO.5123 OF 2006

1.Ajit Raghunath Chaudhary & anr. ...Appellants

vs.

1.Vasai Vikas Sahakari Bank Ltd.
And others. ...Respondents.

Mr.C.U.Singh with Mr.Mahesh Londhe i/b. Sanjay Udeshi
& Co., for Appellants.

Mr.P.K.Rele, Sr.Counsel with D.G.Chhatre with
V.N.Tayde, for Respondents.

CORAM: D.K.DESHMUKH &

V.M.KANADE, JJ.

DATED: 29th NOVEMBER, 2007.

P.C.:-

1. By this appeal, the appellants challenge

the order passed by the learned Single Judge dated 15.1.2007 in Writ petition no.5123 of 2006. By that order, the learned Single Judge has rejected the petition filed by the petitioners in limini. The petitioners were working as branch managers with the respondent no.1-bank. They had filed an application under Section 78 of the Bombay Industrial Relations Act making grievance about their alleged resignation from the post and the issue was whether they are employees within the meaning of Bombay Industrial Relations Act. The labour Court held that the petitioners are not the employees under Section 3(13) of B.I.R.Act, and therefore, the application was not maintainable. The finding was confirmed by the Industrial Court. The learned Single Judge has rejected the petition in limini.

2. One of the contentions urged before the learned Single Judge was that the respondent-bank itself has been treating the petitioners who were

branch managers as employees and in support of that the settlement reached under the B.I.R. Act was relied on as also certain other documents were also relied on. Perusal of the judgment of the learned Single Judge shows that the learned Single Judge has rejected the contention by observing that there is no material produced by the petitioners to indicate that the respondent-bank was continuously and consistently treating them as employees. We find that this observation cannot be said to be completely correct. There is material on record placed by the petitioners. In our opinion, before making the observation the learned Single Judge ought to have referred to that material and after considering that material, the learned Single Judge may have found that the material is not sufficient to prove the case of the petitioners. In our opinion, the matter deserves detail hearing and the petition could not have been rejected in limini. In our opinion, the following order would meet the ends

of justice:-

The order of the learned Single judge impugned in the appeal is set aside. Writ petition no.5123 of 2006 is admitted for final hearing. The learned Single Judge is requested to hear the writ petition as expeditiously as possible.

Appeal is disposed of.

(D.K.DESHMUKH, J.)

(V.M.KANADE, J.)
